



**The Statement of Don T. O'Bannon, Esq.
Chairman of the Airport Minority
Advisory Council (AMAC)**

**Before the Committee on
Transportation and Infrastructure
Of the United States House of
Representatives**

James L. Oberstar, Chairman

At the hearing on:

**The Department of Transportation's
Disadvantaged Business Enterprise
Program**

**Thursday, March 26, 2009
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**Statement of the
Airport Minority Advisory Council (AMAC)
for the Hearing on the Department of Transportation's Disadvantaged Business
Enterprise Program
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Before the U.S. House Committee on Transportation and Infrastructure.**

Mr. Chairman and Members of the Committee, my name is Don O'Bannon. I am the Chair of the Airport Minority Advisory Council ("AMAC"). I am submitting this statement on the Federal Aviation Administration's (FAA) Disadvantaged Business Enterprise (DBE) program and the Airport Concessions Disadvantaged Business Enterprise (ACDBE) Program. AMAC appreciates this opportunity and we thank you for your consideration of our views.

I. Introduction

AMAC is the only national, non-profit organization dedicated to fostering the full and fair participation of minority- and women-owned businesses in airport contracting and concessions, and the inclusion of minorities and women in employment within the airport industry. One of AMAC's most important objectives is to eliminate the discrimination minority- and women-owned businesses continue to face in the airport contracting and concessions businesses. We also aim to raise awareness regarding the important economic benefits these businesses bring to the airports and communities in which they operate. Combined with its affiliate (the AMAC Educational Scholarship Program), AMAC represents thousands of individuals across the airport industry spectrum—including minority and women business owners, corporations, airport operators, and government officials. Dallas/Fort Worth International Airport, where I work, is particularly proud of the growth of our local DBE concession entrepreneurs.

Many of the successful prime concessionaires for DFW's new terminal D started as minority joint venture partners under the DBE program and were awarded several concession packages. The DBE partners' growth and success is a direct result of not only their individual business acumen but also the ACDBE joint venture program at DFW airport.

As this Committee is aware, racial and gender discrimination continue to represent a serious problem in our nation. Unfortunately, in my role as AMAC Chairman and through my experience in the airport industry, I routinely see the impact of discrimination against minority- and women-owned businesses in all aspects of airport contracting and concessions programs. Minority and women business owners have faced discrimination in contracting, credit, bonding, insurance, the purchase of supplies, and in their daily interactions with colleagues. As a result, robust airport contracting and airport concessions disadvantaged business enterprise programs (collectively, "airport DBE programs") continue to play a critical role in the effort to remedy discrimination in these arenas. My testimony will detail the impact of discrimination on DBE contracting and concession businesses and will address certain governmental policies that AMAC believes should be adopted as part of the FAA Reauthorization.

II. The Airport Disadvantaged Business Enterprise Program

The Airport Improvement Program includes codified small disadvantaged business programs to address airport contracting (49 CFR Part 26) and airport concessions (49 CFR Part 23).¹ With the exception of certain DOT rules that apply only

¹ DOT and FAA have joint responsibility for the airport DBE program. FAA's Office of Civil Rights has primary oversight responsibility for the program and for airport compliance. DOT has primary

to airport concessions, the airport DBE program regulations are synonymous to those that apply to federally-assisted surface transportation programs (e.g., the rules regarding goal setting or eligibility). The program is intended to ensure nondiscrimination in the award and administration of DOT-assisted contracts that address the needs of airports. It aims to remedy the long history of pervasive and continuing discrimination that studies show minorities and women still encounter in today's airport-related industries, and to ensure a level playing field on which they can compete for DOT-assisted contracts.

For these programs, Congress has established a national aspirational goal that 10% of FAA's federally assisted contracting (i.e., procurement, construction, or professional services contracts) is with firms certified as DBEs and that 10% of airport concessions are ACDBEs. Quotas are not permitted under the program and the goal is flexible, requiring only good faith efforts to comply. There are no penalties for failure to meet the 10% goal. All primary airports are required to develop and implement an FAA-approved DBE program plan with overall participation goals for their concessions and contracting. A firm (and its minority and women owners) seeking certification as a DBE must meet requirements with respect to (1) ownership and control, (2) personal net worth, and (3) size.

. The airport DBE programs were rewritten entirely in light of the Supreme Court's ruling in Adarand v. Peña² in order to ensure that the DBE program could meet strict constitutional scrutiny. The constitutionality of the DBE program has been upheld against facial challenges by every circuit court that has evaluated it.

responsibility for developing rules and guidelines for the national DBE program and for considering appeals from state or local certification decisions.

² 515 U.S. 200 (1995).

III. Economic Benefits of Minority-Owned Businesses in Airports

Mr. Chairman, the firms that participate in the airport DBE programs are a particularly meaningful source of economic activity in the airport and broader community. In addition to providing important products and services to airports and the traveling public, the airport DBE program promotes entrepreneurship, employment, and economic growth.

For example, the University of North Texas recently conducted a revealing and illustrative study of the Dallas/Ft. Worth International Airport's (DFW) Airport's Disadvantaged, Minority- and Women-Owned Business Enterprise (DMWBE) Program.³ For the period of September 29, 2006 through August 30, 2008, the study found that DMWBE concessionaires produced more than \$350 million in gross revenue and DMWBE firms provided over \$280 million in contracting services and procurement.⁴ Regionally, DMWBE spending and concession operations generated an astounding \$1.2 billion in economic activity—creating over 14,000 job years of employment and increasing labor income by more than \$450 million.⁵ The positive economic contribution of airport DBE firms is an untold story that should be documented and celebrated.

IV. Discrimination Continues to be a Problem in the DBE Industry

While the airport DBE contracting and concessions programs have started to address inequalities faced by minority- and women-owned firms, discrimination continues in the airport industry. There is abundant and compelling evidence demonstrating that there is an ongoing and urgent need for these programs to address

³ Terry L. Clower, Bernard L. Weinstein, Michael Seman, and Mehmet Adalar, Center for Economic Development and Research—University of North Texas, DFW International Airport's Disadvantaged, Minority- and Women-owned Business Enterprise Program: Detailed Findings and Updates (Feb. 2009).

⁴ *Id.* at i-ii.

⁵ *Id.*

current discrimination and the effects of past discrimination against minority- and women-owned firms.

In testimony before and statements submitted to Congress over the past six months,⁶ AMAC has submitted twenty disparity studies.⁷ Through detailed statistical and anecdotal evidence, these studies demonstrate the astounding pervasiveness of discrimination against women and minorities in the aviation industry, as well as every industry sector (e.g. professional services, heavy construction, etc.) with which airports

⁶ *FAA Reauthorization: Hearing Before the Subcomm. on Aviation of the H. Comm. on Transportation and Infrastructure*, 111th Cong. (Feb. 2009) (statement of Gene Roth, Executive Director of the Airport Minority Advisory Council); *Infrastructure Investment: Ensuring an Effective Economic Recovery Package Before H. Comm. on Transportation and Infrastructure*, 111th Cong. (Jan. 2009) (statement of Gene Roth, Executive Director of the Airport Minority Advisory Council); *Hearing Before the Subcomm. on Information Policy, Census and National Archives of the H. Comm. on Oversight and Gov't Reform*, 110th Cong. (Sept. 2008) (statement of Anthony Brown, Chairman of the Government Affairs Committee, Airport Minority Advisory Council); and *Business Start Up Hurdles in Under-Served Communities: Hearing Before S. Comm. on Small Bus. and Entrepreneurship*, 110th Cong. (Sept. 2008) (statement of Don O'Bannon, Chairman, Airport Minority Advisory Council).

⁷ *Race, Sex and Business Enterprise: Evidence from Memphis, Tennessee*, Prepared for the Memphis-Shelby County Airport Authority, NERA Economic Consulting, December 18, 2008; *Final Report: Alaska Disadvantaged Business Enterprise Study—Availability and Disparity*, D. Wilson Consulting Group, LLC, June 6, 2008; *Race, Sex, and Business Enterprise: Evidence from the City of Austin: Final Report Prepared for the City of Austin, Texas*, NERA Economic Consulting, May 15, 2008; *Final Report for Development and Revision of Small, Minority and Women Business Enterprise Program, Nashville International Airport (BNA)*, Griffin and Strong, PC, September 19, 2007; *Disadvantaged Business Enterprise Availability Study*, prepared for the Maryland Department of Transportation, NERA, separate studies for: Maryland Aviation Administration, Maryland Transit Administration, and State Highway Administration, November 2, 2006; *Anecdotal Evidence of Race and Sex Disparities in the Washington State Department of Transportation's Contracting Market Place*, Colette Holt & Associates, July 2006; *Race, Sex and Business Enterprise: Evidence from Denver, CO*, NERA Economic Consulting, May 5, 2006; *Race, Sex and Business Enterprise: Evidence from the State of Maryland*, NERA Economic Consulting, March 8, 2006; *Race, Sex and Business Enterprise: Evidence from the State of Washington*, Prepared for Washington State Department of Transportation, NERA, October 20, 2005; *Race, Sex and Business Enterprise: Evidence from the State of Minnesota*, NERA Economic Consulting and Colette Holt and Associates, September 27, 2005; *State of New Jersey Disparity Study of Procurement of Professional Services, Other Services, Goods and Commodities*, MGT, June 13, 2005; *The City of Phoenix, Minority-Women-Owned and Small Business Enterprise Program Update Study: Final Report*, MGT of America, April 21, 2005; *Disadvantaged Business Enterprise Availability Study*, prepared for the Missouri Department of Transportation, NERA, November 26, 2004; *Disadvantaged Business Enterprise Availability Study*, prepared for the Illinois Department of Transportation, NERA, August 16, 2004; *North Carolina Department of Transportation Second Generation Disparity Study: Final Report*, MGT of America, Inc., March 30, 2004; *Disparity Study for the Commonwealth of Kentucky*, Griffin and Strong, P.C., March 2003; *Broward County Small Disadvantaged Business Enterprise (SDBE) Disparity Study*, MGT of America, Inc., April 3, 2001; *The Utilization of Minority Business Enterprises by The State of Maryland*, NERA Economic Consulting, January 8, 2001; and *Dallas /Fort Worth International Airport Board Disparity Study Final Report*, MGT of America, October 17, 2000.

and other transportation agencies conduct business. These twenty studies represent every region of the country, including both urban and rural areas. In addition, these studies demonstrate that the discrimination faced by women and minority groups, including but not limited to African-Americans, Hispanic Americans, Asian Americans, Subcontinent Asian Americans, and Native Americans comes in a variety of different forms. Each of the studies provides significant quantitative evidence of discrimination against minority- and women-owned businesses dealing in the industries that are integral to airport contracting. With my testimony today, I have provided six of these studies and I ask that they be included in the record.⁸

In order to demonstrate the seriousness of this issue to the Committee, I would like to cite just a few of the myriad of examples of discrimination contained in these studies:

- In a disparity study of the Metro Nashville Airport Authority, researchers found that all minority- and women-owned firms were significantly underutilized in the private construction sector, with disparity indices of 0.003 and 0.28, respectively. In addition, Native American and Asian American construction firms were not utilized at all, despite being available.⁹
- In a study conducted on the State of New Jersey's FY 2000-2004 procurement practices, researchers found that, DBE vendor utilization in the category of professional services, as measured in terms of unique vendors, increased from

⁸ *Evidence from Denver, CO; Race, Sex and Business Enterprise: Evidence from the State of Maryland; The City of Phoenix, Minority- Women-Owned and Small Business Enterprise Program Update Study: Final Report; Broward County Small Disadvantaged Business Enterprise (SDBE) Disparity Study; Final Report for Development and Revision of Small, Minority and Women Business Enterprise Program, Nashville International Airport; and Dallas /Fort Worth International Airport Board Disparity Study Final Report.*

⁹ *Final Report for Development and Revision of Small, Minority and Women Business Enterprise Program, Nashville International Airport (BNA)*, at 4-10.

0.62 percent during the pre-minority business program period to 1.10 percent in the period after the program was enacted. Researchers noted that “any shifts in underutilization can be characterized only within degrees of underutilization—more underutilized or less underutilized—but substantially underutilized in any case.”¹⁰

- Studies have consistently found regression analysis demonstrates that minorities and women earn substantially and significantly less than their white male counterparts. One disparity study noted that “such disparities are symptoms of discrimination in the labor force that, in addition to its direct effect on workers, reduce the future availability of DBEs by stifling opportunities for minorities and women to progress through precisely those internal labor markets and occupational hierarchies that are most likely to lead to entrepreneurial opportunities in the first place.”¹¹
- Research also indicates that there are statistically significant and large business formation disparities for minorities and women. A Minnesota study found that business formation for African-Americans is 53 percent to 63 percent lower than business formation for white males. The study further notes that “this suggests that minorities and women are substantially and significantly less likely to own their own businesses as the result of discrimination.”¹²
- Studies have established widespread discrimination in the credit market. One study found that 40 percent of African Americans and 50 percent of Hispanic

¹⁰ *State of New Jersey Disparity Study of Procurement of Professional Services, Other Services, Goods and Commodities*, at ii-xi.

¹¹ *Evidence from the State of Washington*, at 28.

¹² *Race, Sex and Business Enterprise: Evidence from the State of Minnesota*, at 35-37.

Americans were denied for loans, in comparison to 7.8 percent of non-minority males. In addition, once loans were approved, most minorities and women paid a higher interest rate than white males.¹³

- One study found that DBE participation dropped to virtually zero on federally-assisted contracts during a time when the program was enjoined. Researchers stated that “it appears that the mere fact of adopting a DBE program—whether or not goals are being set on any given contract—increases DBE participation.”¹⁴

While statistical analyses present compelling evidence of discrimination, they do not tell the entire story. We can much better understand the seriousness of these statistics from stories that are told by the businesses themselves. Many of the studies also present extensive anecdotal evidence of discrimination, which gives life to the statistics and makes clear how discrimination actually works and how it specifically impacts minority and women owned businesses at every stage of the process. These anecdotes are the stories of individuals who struggle with discrimination as they seek to build their businesses, support their families, and contribute to our national economy. Here are just a few examples:

- A white woman business owner has experienced degrading treatment from contractors. In one instance, a contractor refused to pay her and gave her the impression that his refusal to pay was because of her gender.¹⁵
- An Alaska Native construction specialty contractor discussed specific experiences during a walk-through of a potential job site. He reported that the prime

¹³ *Final Report for Development and Revision of Small, Minority and Women Business Enterprise Program, Nashville International Airport (BNA)*, at 9-10.

¹⁴ *Race, Sex and Business Enterprise: Evidence from the State of Minnesota*, at 17-18.

¹⁵ *Final Report: Alaska Disadvantaged Business Enterprise Study—Availability and Disparity*, at 8-26.

contractor regularly said “the reason you’re here is because you’re a minority,” and explicitly stated his opinion that minority businesses were not qualified. He also reported that during a project, his company’s equipment was regularly turned on during the night, causing the batteries to die and the project to be delayed. No non-minority contractors experienced this problem.¹⁶

- A Hispanic contractor reported that a general contractor called him to express that he “did not want any Mexicans on the job,” and that he has been called “‘Wetback’, ‘brown like s**t,’ ‘dumb Mexican,’ ‘little Mexican,’ [and] ‘my little Mexican friend.’”¹⁷
- A white woman business owner reported that she encounters people who assume that she is a “front” for a male-owned business, or that she is not qualified until she dispels the notions by demonstrating her expertise. Men she encounters on particular jobs have asked her, “What are you doing here?”¹⁸
- An African American business man reported that people assume that he does not understand relatively simple matters related to his work. At one time, he was bidding a concrete job and the individual he was interacting with spoke to him very slowly, explaining that he wanted to make sure the African American business man understood. He was under the impression that this lack of confidence in his ability to understand was because of his race.¹⁹

¹⁶ *Final Report: Alaska Disadvantaged Business Enterprise Study—Availability and Disparity*, at 8-27 to 8-28.

¹⁷ *City of Phoenix, Minority-, Women-Owned and Small Business Enterprise Program Update Study: Report*, at 6-26.

¹⁸ *Final Report for Development and Revision of Small, Minority, and Women Business Enterprise Program, Nashville International Airport*, at 169-170.

¹⁹ *Final Report for Development and Revision of Small, Minority, and Women Business Enterprise Program, Nashville International Airport*, at 171.

- An African American contractor said he has experienced prime contractors choosing to increase their workforce and equipment so that they can self-perform rather than hiring minority contractors.²⁰
- A female engineer reported being dismissed as a serious professional. She has been asked by men in the transportation industry, “When are you going to stop taking this so seriously and get married?” and advised that she should behave as if she is gay if she wishes to work in the male-dominated field.²¹
- One minority contractor stated that he is treated unprofessionally by majority firms. At one presentation to a general contractor, the minority contractor was never offered a seat, and the general contractor joked and laughed about the fact that he believed he had a way of “getting around” the DBE ordinance and had already chosen another company to work with.²²
- A minority contractor has experienced stigma associated with being a DBE and said that he encounters discrimination often. He has encountered the attitude that minorities are better-suited to be janitors or plumbers than architects. He perceives that his firm gets less credit than non-minority owned firms when projects are successful, and disproportionate criticism when projects are not successful.²³

²⁰ *North Carolina Department of Transportation Second Generation Disparity Study: Final Report*, at 6-24.

²¹ *Anecdotal Evidence of Race and Sex Disparities in the Washington State Department of Transportation’s Contracting Market Place*, at 4.

²² *Race, Sex, and the Business Enterprise: Evidence from the City of Austin: Final Report*, at 231.

²³ *Race, Sex, and the Business Enterprise: Evidence from the City of Memphis: Final Report*, at 261.

These studies provide a strong statistical and anecdotal record of evidence of pervasive discrimination against minorities and women and demonstrate that there is a continuing need for the airport contracting and concessions DBE programs. AMAC strongly urges Congress to continue to investigate and document the continuing impact of discrimination against minority- and women-owned businesses in airport-related industries.

V. Program Improvements and Contained in H.R. 915

Mr. Chairman, we would like to thank you for addressing two issues related to the DBE program in H.R. 915. First, many DBE firms are small, family-owned operations that spend considerable resources to complete the DBE certification program. Although the airport DBE program is governed by a single set of federal regulations, certifying officials often interpret and apply these rules differently. Section 135 of the bill would greatly ameliorate this problem by directing DOT to establish a mandatory certification training program and requiring those involved persons who are responsible for DBE eligibility and certification to complete the training.

Second, Section 137 of H.R. 915 contains a provision which is strongly supported by AMAC and which addresses another aspect of DBE program eligibility, the personal net worth (PNW) cap contained in DOT regulations.²⁴ Under the regulations, in order to be regarded as economically disadvantaged for the purposes of DBE certification, the minority or woman owner(s) of the firm must have a PNW that does not exceed \$750,000. The PNW cap is based on a standard used in a Small Business Administration (SBA) federal contracting program and has not been adjusted for inflation since it was

²⁴ 49 C.F.R. Part 23.35; 49 C.F.R. Part 26.67.

first adopted two decades ago. The PNW formula also does not take into account the realities of operating an airport contracting or concession business, which is generally more expensive than a typical storefront operation. Section 137, directs DOT to issue final regulations to initially adjust the PNW for the inflation that has occurred since 1989 and then to adjust the PNW for inflation each year thereafter. AMAC believes this provision is an excellent addition to H.R. 915 as well as a matter of economic common sense and fairness.

I also want to stress that AIP is an important source of funding for airport capital projects, especially for smaller airports that are less able to access private capital markets. AMAC strongly urges reauthorization of the AIP program at a funding level that allows the program to encourage and support critical airport infrastructure needs. In addition, the multiple short-term extensions that have been enacted over the last 18 months drastically limit the ability to plan and execute important airport infrastructure programs. As such, AMAC would like to urge Congress to act quickly to enact H.R. 915.

VII. Conclusion

Mr. Chairman, AMAC greatly appreciates the House Transportation and Infrastructure Committee's leadership on the important issues of diversity and inclusion in the airport industry. We thank you for this opportunity to provide testimony before the esteemed panel and for your consideration of our comments and suggestions. We look forward to working with the Committee going forward.